

MAYER BROWN LLP

A. JOHN P. MANCINI (*pro hac vice*)

jmancini@mayerbrown.com

OLENA V. RIPNICK-O'FARRELL (*pro hac vice*)

oripnick-ofarrell@mayerbrown.com

1221 Avenue of the Americas

New York, NY, 10020-1001

Telephone: (212) 506-2500

Facsimile: (212) 262-1910

GRAHAM (GRAY) BUCCIGROSS (SBN 234558)

gbuccigross@mayerbrown.com

Two Palo Alto Square, Suite 300

3000 El Camino Real

Palo Alto, CA 94306-2112

Telephone: (650) 331-2000

Facsimile: (650) 331-2060

Attorneys for Defendants

Alphabet Inc. and Google Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MARK MAHON,

Plaintiff,

v.

ALPHABET INC., et al.,

Defendants

Case No. 3:20-cv-01530-JD

**DECLARATION OF GRAHAM (GRAY)
M. BUCCIGROSS IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS
FIRST AMENDED COMPLAINT
UNDER FED. R. CIV. P. 12(B)(6)**

Hearing Date: May 21, 2020

Time: 10:00 a.m.

Courtroom: Courtroom 11, 19th Floor

Judge: Hon. James Donato

1 I, Graham (Gray) M. Buccigross, hereby declare as follows:

2 1. I am an attorney licensed to practice before the courts of the State of California,
3 and am admitted to practice in the Northern District of California. I am an associate with the law
4 firm of Mayer Brown LLP, counsel for Defendants Alphabet Inc. and Google LLC in this action.
5 I submit this declaration in support of Defendants' Motion to Dismiss First Amended Complaint
6 Under Fed. R. Civ. P. 12(b)(6).

7 2. I make this declaration on my own personal knowledge and, if called upon as a
8 witness to do so, I could and would competently testify as to the matters set forth herein.

9 3. Attached hereto as Exhibit A is a true and correct copy of the Superior Court of
10 California, County of Santa Clara's March 5, 2019 Order Concerning Demurrer in *Nguyen v.*
11 *Alphabet, Inc.*, No. 18cv335346.

12
13
14 I declare under penalty of perjury under the laws of the United States that the foregoing is
15 true and correct.

16 Executed this 15th day of April 2020, in Menlo Park, California.

17
18 /s/ Graham (Gray) M. Buccigross
19 Graham (Gray) M. Buccigross
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EXHIBIT A

Decision on Submitted Matter

FILED
MAR - 5 2019

Clerk of the Court
Superior Court of CA County of Santa Clara
BY M DEPUTY

M. Rocaños

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

MAI-TRANG THI NGUYEN,

Plaintiff,

v.

ALPHABET INC.,

Defendant.

Case No.: 18cv335346

ORDER CONCERNING DEMURRER

Defendant Alphabet, Inc. (“Defendant” or “Alphabet”) demurs to the complaint (“Complaint”) filed by plaintiff Mai-Trang Thi Nguyen (“Plaintiff”). For the reasons below, the Court SUSTAINS the demurrer without leave to amend.

I. BACKGROUND

A. Factual

On July 23, 2018, Plaintiff had parked her car in a red zone near a Google office located in Sunnyvale when she was approached by two female Google security guards who proceeded to “harass” and “intimate” her. (Complaint, pp. 1-3.) One security guard purportedly approached Plaintiff and stood “in [the] middle of the sidewalk while [Plaintiff] was standing on the street in the middle of [her] car width,” and said to Plaintiff that she “can’t park here” because she was “parked in the red zone.” (*Id.* at p. 3.) Plaintiff further alleges that the other security guard

1 “slowly shov[ed] her ... presence towards [Plaintiff’s] personal safety zone from another angle.
2 (*Id.* at p. 4.) Plaintiff asserts that these encounters have caused her to experience an “escalated
3 mental-distress,” among other things. (*Id.* at p. 6.)

4 Based on the foregoing allegations, Plaintiff seeks a variety of remedies, including a
5 “note of apology” from Google, Alphabet, the security guards and their supervisor. (Complaint,
6 p. 7.) Additionally, Plaintiff demands “a check” from Alphabet to cover her court-related fees,
7 including the cost of filing two restraining orders against the guards, “the court’s fee-waiving
8 cost,” “e-filing cost plus card [sic] card interest,” “servicing cost plus credit card interest,” and
9 “the printing cost plus credit card interest.” (*Id.* at p. 8.) As an alternative to these remedies,
10 Plaintiff envisions a “fight in the U.S. Supreme Court for a billion dollars.” (*Id.* at p. 6.)

11 **B. Procedural**

12 Plaintiff filed her Complaint on September 20, 2018, alleging that Defendant violated
13 Penal Code section 653.2 by harassing and intimidating her. Four days prior to the initial
14 deadline to respond to the Complaint (November 19), Defendant’s counsel submitted for filing
15 her declaration for an automatic extension to respond under Code of Civil Procedure section
16 430.41, stating that she was not able to meet and confer with Plaintiff. But because an incorrect
17 box inadvertently was checked on the filing form, the Clerk’s Office rejected the declaration.
18 When the deadline for Defendant to file a response passed, Plaintiff submitted a request for entry
19 of default on November 21.

20 On November 29, Defendant’s counsel discovered for the first time that the Court had
21 rejected her declaration and that entry of default was pending. Defendant subsequently filed an
22 ex parte application seeking relief. On December 14, the Court granted Defendant’s application,
23 vacated the pending entry of default, and allowed Defendant to file a responsive pleading to the
24 Complaint.

25 Defendant then filed this demurrer on December 17. Both sides filed briefs, and the
26 Court heard oral argument on March 5, 2019. The Court took the matter under submission, and
27 now issues this Order.
28

1 II. MEET-AND-CONFER PROCESS

2 Plaintiff argues that Defendant did not properly meet and confer before filing this
3 demurrer. After reviewing the record, the Court believes that Defendant sufficiently attempted
4 to meet and confer with Plaintiff. (See Ton Decl., ¶ 2.) Even if the Court were to determine that
5 the parties' meet-and-confer process was insufficient, that "shall not be grounds to overrule or
6 sustain a demurrer." (Civ. Proc. Code § 430.41(a)(4).) The Court therefore will reach the merits
7 of Defendant's demurrer.

8 III. LEGAL ANALYSIS OF DEMURRER

9 Defendant argues that Plaintiff's only stated "cause of action" for violation of Penal Code
10 section 653.2 must fail because: a) no private right of action exists under that statute; and b)
11 Plaintiff fails to allege facts that could constitute a cause of action against Alphabet, which is the
12 parent company of Google.

13 Penal Code section 653.2 relates to cyber harassment and provides that a person is guilty
14 of a misdemeanor if she:

15 with intent to place another person in a reasonable fear for his or her safety, or the
16 safety of the other person's immediate family, by means of an electronic
17 communication device, and without consent of the other person, and for the
18 purpose of imminently causing that other person unwanted physical contact,
19 injury, or harassment, by a third party, electronically distributes, publishes, e-
20 mails, hyperlinks, or makes available for downloading, personal identifying
21 information, including, but not limited to, a digital image of another person, or an
22 electronic message of a harassing nature about another person, which would be
23 likely to incite or produce that unlawful action

24 (Pen. Code, § 653.2, subd. (a).)

25 The provisions of the Penal Code do not provide a private right of action unless it is
26 expressly set forth in the particular provision at issue. (See, e.g., *Animal Legal Def. Fund v.*
27 *Mendes* (2008) 160 Cal.App.4th 136, 144 [holding no private right of action existed under Penal
28 Code section prohibiting animal cruelty because the court was "not to create such a right" "in the

1 absence of [legislative] intent to provide a private right of action” under the section]; *Ellis v. City*
 2 *of San Diego* (9th Cir. 1999) 176 F.3d 1183, 1189 [affirming dismissal of claims predicated on
 3 violations of the California Penal Code “[b]ecause these code sections do not create enforceable
 4 individual rights”).)

5 Here, nothing in Penal Code section 653.2 suggests that violation of its provisions may be
 6 enforced by a private right of action. In any event, section 653.2 does not apply to the facts
 7 alleged in the Complaint, since the Complaint never mentions any “electronic communication
 8 device” use by either of the two security guards. Frankly, Plaintiff fails to allege sufficient facts
 9 demonstrating that Defendant violated *any* applicable law and does not allege any other statutory
 10 claim, common law tort or other legal cause of action to support her Complaint.

11 Turning to Defendant’s remaining argument, the Court agrees that Plaintiff’s Complaint
 12 lacks any allegations either targeting Alphabet specifically or establishing Alphabet’s liability in
 13 its capacity as Google’s parent corporation. A parent corporation is not liable for the acts of its
 14 subsidiary merely because it wholly owns that entity. (See *Roy Supply, Inc. v. Wells Fargo*
 15 *Bank, N.A.* (1995) 39 Cal.App.4th 1051, 1076.) Liability on the parent must be based upon
 16 either the breach of a separate duty owed by the parent to the plaintiff, or upon a showing that the
 17 subsidiary is the alter ego of the parent, and it would be inequitable to recognize its corporate
 18 separateness. (*Id.*) Plaintiff has pleaded no facts demonstrating Alphabet’s liability under either
 19 of these circumstances and thus, even if she had stated a cognizable claim, would not have stated
 20 one against Alphabet in particular.


21 **III. CONCLUSION**

22 There is no reasonable possibility that Plaintiff will be able to fix the Complaint’s many
 23 problems if given leave to amend. (See *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 386.)
 24 Therefore, the Court SUSTAINS the demurrer without leave to amend.

25 **IT IS SO ORDERED.**

26 Date:

27 3/5/19

28 
 The Honorable Sunil R. Kulkarni
 Judge of the Superior Court